

DATE

Richard P. Keigwin, Director
Office of Pesticide Programs
USEPA Headquarters
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N. W.
Mail Code: 7508P
Washington, DC 20460

Dear Mr. Keigwin,

On behalf of the State FIFRA Issues Research and Evaluation Group (SFIREG), a permanent committee of the Association of American Pesticide Control Officials (AAPCO), we wish to express our concerns regarding the establishment and adoption of action levels, by agencies other than the US Environmental Protection Agency and the broader implications of such action.

In the absence of federal guidelines, states with legalized recreational and medical *Cannabis*, specifically, marijuana, have been compelled to address the use of pesticides on this crop within their states. In some states, action levels for pesticide residues have been adopted by non-pesticide regulatory agencies (non-FIFRA state agencies) for marijuana and marijuana products without prior or continuing consultation with their pesticide regulatory lead agencies or with the US Environmental Protection Agency. State lead agencies are concerned that in situations where action levels or thresholds are set for a crop, pesticide residues still may exist on retail products derived from that crop. Certain pesticide residues, consumed even at low levels, may constitute significant public health risks.

Action levels (ALs) are not health based, and in one state with mandatory cannabis testing, ALs were originally presented by a non-FIFRA state agency as the level of quantification (LOQ) to be achieved by private testing laboratories. However, the ALs have been misinterpreted as tolerances, or a level that can not exceeded, by the cannabis growing community; and essentially have been used as de facto tolerances by growers and non-FIFRA state agencies. This in part could be due to the misleading name, action level vs. the quantification level. In addition, in some states there is not a refined mechanism or coordinated effort to notify the FIFRA state agency of detections above or below the ALs. Educational efforts regarding the differences between ALs and tolerances has been inadequate. The ALs can often be greater than many EPA established tolerances for commonly consumed foods.

Under the Federal Food, Drug and Cosmetic Act (FFDCA) only the Environmental Protection Agency (EPA) may set tolerances and exemptions for pesticide chemical residues on any food, drink... gum or other article, that is intended for consumption by man or other animals.

[SEC. 408 2 21 USC 346a (a). Any pesticide chemical residue in or on a food shall be deemed unsafe for the purpose of section 402(a)(2)(B) unless-

(A) A tolerance for such pesticide chemical residue in or on such food is in effect under this section and the quantity of the residue is within the limits of the tolerance; or

(B) An exemption from the requirement of a tolerance is in effect under this section for the pesticide chemical residue. For the purposes of this section, the term “food”, when used as a noun without modification, shall mean a raw agricultural commodity or processed food.

A primary objective of all pesticide regulatory agencies designated to protect human health and the environment is to identify and correct any use or misuse of registered or unregistered products that may endanger the public. When states make independent determinations of action levels or action thresholds for any crop, pesticide regulatory agencies may not be able to enforce pesticide uses on the crop effectively within the state where this has occurred. State-determined action thresholds usually have been set independently of any substantive consultation with state or federal regulatory agencies responsible for enforcement of pesticide laws and regulations.

Where no pesticides are labelled for use on a crop intended for human consumption due to an absence of legal pesticide tolerances established for the crop, setting action levels for pesticides constitutes a risk to persons consuming the crop and any products derived from it. There are a number of minimum-risk and certified organic pesticides that have exemptions from tolerance for all food uses. Other than the use of these pesticides, states should disallow any other pesticide uses or residues on any crop.

As national leaders representing pesticide regulatory agencies in the United States, we request that the US EPA take immediate action to protect public health from potentially harmful pesticide levels in crops where action levels/thresholds have been set. We believe it is imperative for state lawmakers in every state to:

- 1) remove any pesticide “action-levels” already set in state law, as we believe they are in conflict with and less restrictive than federal law,
- 2) clearly state the purpose of any laboratory testing levels or levels of quantification, and name the testing levels appropriately, and
- 3) grant appropriate authority to pesticide lead agencies within the states to fully regulate all pesticide distribution, use, storage and disposal related to crop production.

Competing interests can prevent state lead agencies from taking any regulatory action with regard to illegal residues being found on agricultural products where action levels have been set by the state. The US EPA has a responsibility to protect human health and the environment whenever uses of pesticides are employed, and we have a collective responsibility to protect all of the public against illegal and potentially harmful residues in the agricultural products they consume or that may be found in other products that are applied topically or inhaled.

This letter serves to encourage the United States Environmental Protection Agency to communicate these points of concern to state Governors, and Commissioners/Directors of Agriculture, and to bring to their immediate attention that the development and utilization of action-levels as de facto tolerances, and illegal uses of federally registered pesticides within states are violations of federal law.

It also should be communicated to state government leaders that cooperation with pesticide lead agencies within their states must occur with regard to pesticide distribution, use, storage, and disposal related to agricultural crop production. The primary purpose of this is to protect public health until such time that the US EPA can determine that tolerances, when established for a crop, are sufficient to ensure that consumers are not exposed to potentially hazardous pesticide residue levels.

Respectfully Submitted,

Liza Fleeson Trossbach

cc: AAPCO Board of Directors
Full SFIREG

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